IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

**O R D E R**

S.B. CRIMINAL REVISION PETITION NO. 209/2007

*ATEEK & ANR. Vs. STATE OF RAJASTHAN*

DATE: 08.03.2007.

**HON'BLE MR. K.S. RATHORE, J.**

Mr. Dinesh Kumar Garg for the accused-petitioners.
Mr. Ashwini Kumar Sharma, PP for the State.

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**R E P O R T A B L E**

The instant criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the accused-petitioners against the order dated 20.02.2007 passed by the Additional Sessions Judge (Fast Track) No.2, Dholpur in Sessions Case No. 68/2006, whereby cognizance has been taken against the accused-petitioners under Section 319 Cr.P.C. and they have been summoned through warrants of arrest.

Brief facts of the case are that First Information Report was lodged by the complainant Chintamani Sharma alleging therein that when he along with some other employees went to inspect the site about electricity theft and when he inspected the houses of Abdul Salam, Ateek, Anish, Abdul Kalam and

Ballo, it was found that electric equipments have been tempered with, therefore, some of them were seized. During inspection which was conducted by the team, suddenly aforesaid accused along with 4-5 persons assaulted the complainant and other employees and snatched the seized articles and due to assault the complainant also received injury.

The police registered the above report as FIR No. 59/2006 for the offence punishable under Sections 332, 353 and 379 IPC and started investigation and after investigation, filed charge-sheet against Anish, Saleem, Abdul Salam and Abdul Kalam. The learned Magistrate took cognizance for the above offences against all the four accused persons. The trial Court after framing the charges against the four accused persons, put them for trial. During trial statements of the prosecution witnesses and the defence witnesses and statements of the accused-persons under Section 313 Cr.P.C. were recorded and the matter was fixed for final arguments. The trial Court after hearing the final arguments, fixed the case for pronouncement of judgment on 20.02.2007, but on that day i.e. 20.02.2007 instead of pronouncing the judgment, passed the impugned order by which the trial Court has taken cognizance against the petitioners for the offence

punishable under Sections 147, 332, 333, 353 and Section 149 IPC after applying the provisions of Section 319 Cr.P.C. and summoned the accused-petitioners through arrest warrants.

Aggrieving and dissatisfying with the said order dated 20.02.2007 passed by the trial Court, the accused-petitioners have preferred this revision petition on the ground that the trial Court has ordered de novo trial as the present case was fixed for pronouncement of judgment and now if the impugned order is allowed to stand, the fresh trial will start which is contrary to the ratio decided by the Hon'ble Supreme Court in the case of **Michael Machado and another Vs. Central Bureau of Investigation and another, reported in AIR 2000 SC 1127,** wherein the Hon'ble Supreme Court has held that addition of person a co-accused invoking power under Section 319 Cr.P.C. at belated stage and at the cost of de novo trial is not proper.

Learned counsel for the petitioner also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Krishnappa Vs. State of Karnataka, reported in 2004 R.C.C. (SC) 841,** wherein it has been held by the Hon'ble Supreme Court that power to summon an accused is an extra-ordinary power

conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against other person against whom action has not been taken invoking the power under Section 319 Cr.P.C.

On the other hand, learned Public Prosecutor appearing for the State submits that it is not a case that while exercising power under Section 319 Cr.P.C., the Court has summoned the accused whose names were not in the FIR. Here in the instant case, accused against whom cognizance has been taken, their names find place in the FIR itself and the Court below after appreciating the evidence of the prosecution witnesses while exercising power under Section 319 Cr.P.C. has taken cognizance against the accused-petitioners under Sections 147, 332, 333, 353 and 149 IPC.

Learned Public Prosecutor also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Shashikant Singh Vs. Tarkeshwar Singh And Another, reported in (2002)5 SCC 738,** wherein the Hon'ble Supreme Court considering the case of **Michael Machado and another (supra),** has held that trial of newly added accused on conclusion of main trial- Where during pendency of trial of an accused another person

is summoned by trial Court under S. 319 and if by the time the person summoned could be brought before the court the trial is concluded, held, the person summoned can be tried for the offence for which he was summoned- Requirement under sub-section (1) of S. 319 that the person summoned “could be tried together with the accused” is directory whereas requirement under sub-section (4) of S. 319 regarding de novo trial of such person is mandatory.”

Here applying the ratio decided by the Hon'ble Supreme Court in the aforementioned case of **Shashikant Singh (supra),** it is not a case where other persons are summoned by the trial Court while exercising power under Section 319 Cr.P.C. In the instant case, only after appreciating the evidence of the witnesses recorded, offence under Sections 147, 332, 333, 353 and 149 made out against the accused-petitioners and, therefore, they are ordered to be tried under the aforesaid Sections, which cannot be said to be de novo trial.

Thus, the order impugned dated 20.02.2007, by which the petitioners are added as accused and cognizance has been taken against these accused-petitioners for the offence under Sections 147, 332,

333, 353 and 149 IPC, I find no illegality or error apparent on the face of the record in the impugned order and the same requires no interference whatsoever by this Court.

Consequently, the revision petition fails and the same is hereby dismissed.

However, considering the request made by the learned counsel for the accused-petitioners that the arrest warrants issued against the petitioners be converted into bailable warrants, in the interest of justice, I deem it proper to modify the order impugned dated 20.02.2007 to the extent that arrest warrants issued against the accused-petitioners be converted into bailable warrants.

**(K.S. RATHORE),J.**

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